



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

Board of Supervisors
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First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

May 4, 2007

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT SB 670 (CORREA) – DEVELOPER FEES (ITEM NO. 7, AGENDA OF MAY 8, 2007)

Item No. 7 on the May 8, 2007 Agenda is a motion by Supervisor Antonovich to support SB 670 (Correa). This item was continued from the May 1, 2007 Board meeting.

The prior version of this bill sought to eliminate a new type of private real estate transfer fee unless it was in place before December 31, 2007. The sponsors of the bill (The California Association of Realtors) indicate that these fees, which were used to provide funding for environmental causes, can be imposed in perpetuity, and that there was very little accountability regarding the use of the funds, and that the fees did not necessarily benefit the persons required to pay them. Taxes and fees imposed by governmental entities, court ordered transfers, payments or judgments, mechanics' liens, property agreements in connection with a legal separation or dissolution of marriage, and fees imposed by lenders, among others were exempted from the prohibition. The prior Agenda memo is attached.

As amended on May 1, 2007, SB 670 would place restrictions on the use of these private developer fees and provide accountability for the use of these funds. Specifically, the bill would prohibit the imposition of "new developer fees" or transfer fees after December 31, 2007, unless they meet specified requirements. In order for the developer fee to be valid, the application for a public report must state whether the property offered for sale or lease is subject to a transfer fee, and if so, would require a

description of how the fee will be used and require a subdivider to record a document making specified disclosures about the transfer fee. Transfer fees must be imposed on all buyers and last no more than 30 years from the time they are first recorded.

In addition, SB 670 would: 1) require transfer fees to be paid to nonprofit entities; 2) require any nonprofit entity collecting and using transfer fees to submit annual reports to the Department of Real Estate regarding the status of the project funded by the transfer fee; 2) permit the Real Estate Commissioner to charge the nonprofit organization for failure to file a required report regarding the use of the funds ; 3) require the Department of Real Estate to make those reports accessible on its Web site; and 4) add special conditions for property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, such as a description of the project to be funded by transfer fees.

Furthermore, the bill prohibits the imposition of transfer fees on property upon which low-and moderate-income housing is to be built. The transfer fee may only be used for a project that funds a facility or provides a service that provides a public benefit to the real property that is subject to the transfer fee, and must be located in, or the service shall be provided in, the same county within 25 miles of where the real property is located. Therefore, the fees charged must provide a benefit to the fee payers. A transfer fee that funds a facility or service that supports affordable housing is deemed to provide a public benefit to the real property that is subject to it. No more than five percent of the transfer fee may be used by a nonprofit organization for administration of the project and no transfer fees may be used for lobbying or litigation and shall not be transferred to another entity for these purposes.

SB 670 continues to exempt from the fee, prohibition taxes and fees imposed by governmental entities; court ordered transfers, payment, or judgment; mechanics' liens; property agreements in connection with a legal separation or dissolution of marriage; and fees imposed by lenders, among others.

The Departments of Consumer Affairs and Regional Planning reviewed SB 670 and indicated that this bill does not have any effect on them because it is a developer fee that is charged to real estate buyers. Regional Planning indicates that the department does not impose fees on the sale or transfer of real property.

The Community Development Commission (CDC) indicates that they are in favor of additional funding for facilities or services that support affordable housing. There is a shortage of operational funding for facilities and services that are provided to low- and moderate-income individuals and families. This funding could be used by the CDC or non-profits to provide additional services to these individuals and families. It is unclear

Each Supervisor
May 4, 2007
Page 3

if the fees can be used to help produce additional units of affordable housing or if the funds can only be used for facilities such as community, recreation, resource or learning centers, or for services that are provided to these individuals. Because the CDC supports additional funding for the development of affordable housing, or for facilities and services that support affordable housing, they recommend that the County support SB 670.

Since there is no existing policy on this issue, support for SB 670 is a matter for Board policy determination.

SB 670 is sponsored by the California Association of Realtors, but support and opposition to the May 1, 2007 version of the bill is unknown. This measure is set for hearing on May 8, 2007 in the Senate Transportation and Housing Committee.

DEJ:GK
MAL:EW:hg

Attachment

c: Executive Officer, Board of Supervisors
 County Counsel
 Community Development Commission
 Consumer Affairs
 Regional Planning



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April 27, 2007

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

**MOTION TO SUPPORT SB 670 (CORREA) – DEVELOPER FEES (ITEM NO. 17,
AGENDA OF MAY 1, 2007)**

Item No. 17 on the May 1, 2007 Agenda is a motion by Supervisor Antonovich to support SB 670 (Correa).

Current law allows various required fees to be included in the price of a residential real estate transfer. These include public fees such as transfer taxes and document recording fees as well as private fees such as homeowner association processing fees. All of these required fees and payments must be disclosed on statutorily required forms. In addition, various types of voluntary fees, including escrow fees, title insurance premiums, and realtor commissions, as well as liens, including mechanics' liens, judgment liens, and lender liens, are all paid out of escrow.

According to the Senate Transportation and Housing Committee Analysis, a new type of fee has been employed recently: a private real estate transfer fee. Such a fee was first devised in Roseville three years ago when a project developer and the city agreed to a legal settlement with environmentalists allowing for the development of 8,400 new homes on the city's last large expanse of vacant land while preserving nearly 6,000 acres of open space. The \$85 million needed to purchase the agreed-upon open space

will come from a charge of a percentage of the sales price each time a home within the development is sold over the next 20 years. The fee goes to the private, non-profit Placer Land Trust for the purchase of the open space. These fees are required as part of the covenants (CC&Rs) recorded against the property. There are at least two other known instances in which housing developers have imposed similar private transfer fees.

As amended on April 11, 2007, SB 670 would prohibit these types of transfer fees after December 31, 2007. The bill would provide that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of real property that contains a requirement that any transferee pay a fee upon transfer of the real property is void, unless the requirement was in effect on or before December 31, 2007. The bill would exempt from this definition taxes and fees imposed by governmental entities; court ordered transfers, payment, or judgment; mechanics' liens; property agreements in connection with a legal separation or dissolution of marriage; and fees imposed by lenders, among others.

The sponsors of the bill indicate that private transfer fees are not limited to non-profit public benefit corporations but can also be imposed for the benefit of individuals or corporations. They point to a website that encourages homeowners to record transfer fee requirements against their own properties in order to receive a share of all future sales. While such fees should be reflected in the market value of the property, there seems to be little policy rationale to allow such fees. In addition, the sponsors argue that, unlike local governments, non-profit organizations or others that receive private transfer fees are not accountable to the fee payers or to the public at large.

Opponents argue that funding community facilities and amenities is often required as part of the development process. In their view, "reconveyance financing" is a smart and equitable way to fund these facilities and amenities over time in order to avoid saddling buyers of new homes with huge up-front costs. If original homebuyers were required to pay the entire cost of required mitigation at the time of initial sale, the cost would be 10 to 20 times higher. Opponents further point out that the fees in existence to date have not deterred home sales.

The Community Development Commission and Department of Consumer Affairs reviewed SB 670 and indicated that this bill does not have any effect on them, and there is no existing policy on this issue. **Therefore, support for SB 670 is a matter for Board policy determination.**

Each Supervisor
April 27, 2007
Page 3

SB 670 is sponsored by the California Association of Realtors, and supported by over 45 Realtor Associations throughout the State. This measure is opposed by the California Building Industry Association, California League of Conservation Voters, California State Parks Foundation, Defenders of Wildlife, Orange County Community Housing Corporation, Planning and Conservation League, and Sierra Club.

SB 670 is set for hearing on May 8, 2007 in the Senate Transportation and Housing Committee.

DEJ:GK
MAL:EW:hg

c: Executive Officer, Board of Supervisors
County Counsel
Community Development Commission
Consumer Affairs